IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 824 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

USMANBHAI BILALBHAI

Versus

HAJI MAHMADHUSEIN ISMAILBHAI

Appearance:

MR SURESH M SHAH for Petitioner

MR MC BHATT for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 15/12/2000

ORAL JUDGEMENT

#. This is tenant's revision under sec.29(2) of the Bombay Rent Act against the concurrent judgments and decrees of the trial Court as well as the appellate Court directing eviction of the revisionist from the demised portion.

#. The brief facts are that, according to the landlord, respondent, one room on the first floor was let out to the revisionist on monthly rent of Rs.35=00. The taxes were not inclusive of rent. The revisionist fell in

arrears of rent with effect from 1-4-1978 to 31-8-1981. Consequently, notice of demand and eviction dated 11-9-1981 was served by Regd.A.D.Post on 15-9-1981. The notice remained uncomplied with, hence suit for eviction was filed.

#. The suit was resisted by the revisionist on the ground that the agreed rent of Rs.35=00 per month is excessive and that the standard rent of the suit premises should be fixed. He also pleaded that he is tenant not only of one room on the first floor but, also of one room and open land on the ground floor in addition to one room on the first floor on Rs.35=00 per month. He pleaded that, the rent amounting to Rs.340=00 was paid. At some place in the judgment of the lower appellate Court, this amount is typed as Rs.840=00. The tenant pleaded that no receipt of payment of rent was given by the landlord. He also remitted Rs.280=00 by money order, which was refused by the landlord. Validity of notice was also challenged by the revisionist.

#. The trial Court found that the defendant's plea of payment of rent was not believable because, every time, whenever rent was paid by him, rent receipt was issued and that the last receipt was for payment of rent for the months of February and March, 1978, and thereafter no rent was paid. It was, thus, concluded that the tenant was in arrears of rent for a period exceeding six months. It was also found that the arrears of rent were not paid within a month of service of notice of demand. The standard rent was fixed to be the agreed rent of Rs.35=00 per month. Notice was found to be valid. With these findings, the suit was decreed by the trial Court.

#. Feeling aggrieved, the tenant preferred an appeal, which was dismissed. It is, therefore, this revision.

#. Shri MS Shah for the revisionist and Shri Vikram Thakor, representing Shri MC Bhatt for the respondent have been heard and the judgments of the two courts below have been examined.

#. Shri Thakor has raised preliminary objection that since, it is a case of concurrent finding of fact recorded by the two courts below, the High Court will not be justified in interfering in this revision. He has relied upon Madras High Court judgment in case of VAITHIANATHA ASARI v. SENTHAMIL SELVI reported in AIR 1992 Madras 352. This case is, however, under sec.115 of the Code of Civil Procedure which is not in parimateria with sec.29(2) of the Bombay Rent Act. It is, however,

settled position that, even while deciding revision under sec.29(2) of the Bombay Rent Act the concurrent findings recorded by the two courts below should not be interfered unless such findings are found to be contrary to law or perverse.

#. Having examined the judgments of the two courts below, I do not find any perversity in the findings of the trial Court or the appellate Court that the rent for a period exceeding six months was due from the revisionist and this period was between 1-4-1978 to 31-8-1981.

#. The plea of payment of rent alleged and raised by the revisionist was refused by the two courts below on proper appreciation of oral as well as documentary evidence on record, namely, counterfoil receipt books, proved and produced by the landlord indicating that, after March 1978, no rent was paid and no rent receipt was issued. The two courts below were justified in accepting that the landlord should not have stopped issuing receipt, especially when on earlier occasion he was regularly issuing receipt whenever rent was paid to him. Consequently, this finding of fact also requires no interference.

##. Shri Shah, learned counsel for the revisionist, however, raised two points assailing the judgments of the two courts below. The first contention has been that, the notice Ex.20 is invalid. The second contention has been that, the case is not covered by sec.12(3)(a) of the Bombay Rent Act, rather it is covered by sec.12(3)(b), and since the suit was filed under sec.12(3)(a) and the landlord has failed in establishing the ingredients of sec.12(3)(a), he can not be permitted to fall back on sec.12(3)(b). In my opinion, the first point is sufficient for disposal of this revision. From notice Ex.20, as well as, from averments made in the plaint, it is clear that the landlord, respondent alleged that the tenant, revisionist was a tenant of only one room on the first floor at the rate of Rs.35=00 per month. The tenant, revisionist, on the other hand, alleged that he is tenant not only of one room on the first floor, but also of one room and open land on the ground floor on Rs.35=00 per month. At some stage during trial, it came in evidence that the tenant had encroached upon open land on the ground floor. However, the trial Court found that the revisionist was tenant of one room on the first floor and one room and open land on the ground floor on monthly rent of Rs.35=00 per month. This finding was affirmed by the appellate Court. There is, thus, concurrent finding

of fact about the extent of tenanted accommodation recorded by two courts below after appreciation of evidence on record. Proceeding on this concurrent finding of fact, which is not liable to be interfered in this revision, validity of notice has to be examined. In the notice Ex.20, tenancy has been terminated in respect of only one room. There is no mention of termination of tenancy of the portion on the ground floor, namely, one room and open land on the ground floor. Further, the demand was also made of the rent only for one room on the first floor. It is, thus, clear from the notice that excessive demand of rent was made in the notice, in as much as, rent for total tenanted accommodation was not demanded. Further, in the notice, tenancy was terminated only for one room on the first floor and not for the room and open land on the ground floor. It is, thus, a case of partial termination of tenancy and the suit for eviction on the basis of notice, which terminated tenancy partially, could not be decreed by the two courts below. I am fortified in this view by the pronouncement of Supreme Court in CHIMANLAL v. MISHRILAL AIR 1985 S.C. 136.

##. On the basis of illegal notice of termination of tenancy and also illegal notice of demand, the suit for eviction could not be decreed by the two court below. As such, it is not a case of concurrent findings recorded by the two courts below which can be said to be concurrent findings in accordance with law. Since the concurrent finding regarding validity of notice are not in accordance with law and further because validity of the notice was not examined by the lower appellate Court, it can be said that the judgments and decrees of the two courts below can not be sustained.

##. For the reasons stated above, the revision succeeds and is allowed. The judgments and decrees of the two courts below are set-aside. The suit of the respondent, landlord for eviction of the tenant, revisionist from the demised portion is hereby dismissed with no order as to costs. The decree for arrears or rent etc. is maintained.

December 15, 2000. [D.C. Srivastava, J.]

/sakkaf